

MINUTES OF THE MEETING
OF THE CITY COUNCIL OF THE
CITY OF BURLINGTON

May 1, 2007

7:30 P.M.

The City Council of the City of Burlington held a regularly scheduled meeting in the Council Chamber, Municipal Building, 425 South Lexington Avenue, Burlington, N. C., 27216-1358, on May 1, 2007, at 7:30 p.m.

Mayor Stephen M. Ross presided

Councilmembers present: Mayor Ross, Councilmembers Jones, Huffman, Starling and Wall

Councilmembers absent: None

Harold Owen, City Manager, present

Robert M. Ward, City Attorney, present

Jondeen D. Terry, City Clerk, present

INVOCATION: Councilmember Don Starling

PRESENTATION: Minetree Pyne Preservation Award - Michael & Fredda Payne, 2390 NC Highway 62 North; Mike Adams and Tim & Beth Kelley, 408 & 410 Tarpley Street

RECOGNITION: Recreation and Parks Staff by the USA South Athletic Conference

PROCLAMATION: Motorcycle Safety Awareness Month

MINUTES

Mayor Ross called for approval of the City Council minutes of the meeting of April 17, 2007.

Upon motion by Councilmember Wall, seconded by Councilmember Starling, it was resolved unanimously to approve the minutes of the meeting held on April 17, 2007.

ADOPTION OF AGENDA:

Upon motion by Councilmember Huffman, seconded by Councilmember Starling, it was resolved unanimously to adopt the agenda.

CONSENT AGENDA:

1. (A) To approve a final plat of the Waterford Subdivision, Phase 3. The property is located west of University Drive and south of South Church Street as shown on plans by Coulter Jewell Thames dated April 5, 2007, and containing 26 lots.
- (B) To temporarily close the 200 block of Broad Street from Hawkins Street to Ruffin Street for Freedom Fellowship Church and Lost Souls Ministry on May 26, 2007, from 9:00 a.m. to 6:00 p.m.
- (C) To temporarily close Day Street from Fulton Street to Lincoln Street for a block party on July 28, 2007, from 3:00 p.m. to 12:00 a.m.
- (D) To temporarily close the following streets for the Alamance County Arts Council 1st Annual Burlington Urban Golf Tournament on Saturday, June 2, 2007, beginning at 12 noon until 7:00 p.m.:
 - Front Street - from Worth Street to Lexington Avenue
 - Davis Street - from Worth Street to Lexington Avenue
 - Main Street - from Maple Avenue to the Depot
 - Spring Street - from Maple Avenue to Davis Street
- (E) Budget Amendment 2007-33 - Recognize Insurance Proceeds - Water Line Maintenance Repair

BA2007-33

Increase Revenues:

030-31200-0003	Insurance Refund	\$ 2,086
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Increase Expenditures:

030-72702-1510	Maintenance - Culverts	\$ 2,086
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(F) Budget Amendment 2007-34 - Drug Interdiction
Positions - Equipment Needed

BA2007-34

Increase Revenues:

013-39398-0000 Appr. Fund Balance - RICO \$15,800

Increase Expenditures:

013-52520-1401 Training	\$ 1,000
013-52520-3300 Supplies	\$ 3,000
013-52520-7400 Equipment	\$11,000

Councilmember Jones stated that he had an oral commitment to buy a lot at Waterford Subdivision (Consent Agenda Item A) but did not have a pecuniary interest in it. He further stated that City Attorney Ward had advised that approving a final plat was a ministerial act and that that he would not need to recuse himself from Consent Agenda Item A.

City Attorney Ward stated that plat approval was principally a ministerial act in that all subdivision requirements are satisfied prior to submission to the City Council and therefore the consideration of the approval of the plat does not require the use of the discretionary powers of the City Council. Additionally, Mr. Jones has stated that he did not have a current pecuniary interest in this matter. Taking the foregoing circumstances into consideration, it would not be inappropriate for Mr. Jones to vote on the consideration of the approval of this plat.

Upon motion by Councilmember Huffman, seconded by Councilmember Wall, it was resolved unanimously to approve the foregoing Consent Agenda.

UNFINISHED BUSINESS:

ITEM 2: REZONE PROPERTY - NORTH CHURCH STREET

Mayor Ross announced that a public hearing had been scheduled to consider an application to rezone from R-9, Residential District, to B-2, General Business District, and MF-A, Multifamily District, the property located on the north side of North Church Street approximately 360 feet southeast of McKinney Street and being as shown on Alamance County Tax Map

13-17, Lot 4C (from R-9 to MF-A) and Lot 4D (from R-9 to B-2).
(Continued from April 3, 2007, and April 17, 2007, City Council meetings)

Mr. Charles Bateman, Bateman, Oertel & Koonts, PLLC, stated that this request was presented last month with a lively public hearing that was continued. Mr. Bateman stated that the purpose of the continuance was to allow the proposed developer from Columbia, South Carolina, an opportunity to meet with the neighbors and show the neighbors what the plans and vision would be for this property and to try and reach some accommodation. He stated that Mr. Chris Record was present and that he had met with the neighbors. Mr. Bateman stated that from the land use prospective this request would be an appropriate use for the property. Mr. Bateman made a point that there were three parcels involved in the request and asked that they be considered separately when voting.

Mr. Chris Record, MV Communities, stated that there was a neighborhood meeting at Western Charcoal Steakhouse and that he had answered many of the neighbors' questions. Mr. Record stated that only ten people attended the meeting. He stated that MV Communities was a long-term owner, 45-year-old company, located in ten states and that apartments were only part of its business. Mr. Record stated that his company was not sellers of properties and tends to hold properties for long terms. Mr. Record asked the Council to approve the rezoning request.

Mr. Russell Hogan, 2820 McKinney Street, spoke in opposition of the rezoning due to decreasing value in properties, increased traffic, high level of noise, increased domestic and drug related crimes.

Mr. Russell Koelsch, 2842 McKinney Street, spoke in opposition of the rezoning due to the location of the proposed parking lot located behind existing homes and crimes associated with parking lots. He stated that R-9 zoning should be the zoning, which would allow for fewer apartments.

Ms. Deanna Miller, 2904 McKinney Street, spoke in opposition of the rezoning due the proposed parking lot and its potential for crime. Ms. Miller asked for R-9 zoning versus MF-A but stated she would prefer single-family housing. Ms. Miller asked Council to consider Conditional zoning so that the community could decide what would go there.

Mr. Victor Hugo, Woodhaven Drive, spoke in opposition of the rezoning due to increased traffic and density.

Mr. Darren Miller, 2904 McKinney Street, spoke in opposition of the rezoning due to increased traffic. He stated that he would not be opposed to commercial for buildings that front on Church Street.

Mr. Don Cox, 614 Morningside Court, stated that he owned a business located a few hundred feet from the intersection of McKinney Street and North Church Street. He stated that apartments on North Church Street were zoned R-9 and described their disrepair. Mr. Cox stated he was excited about what was being proposed and that the developer would have a great deal of control over the property.

Councilmember Huffman stated that the Council should revisit the fact that apartments are allowed in R-6 and R-9 zoning. He stated they should be considered under conditional zoning.

City Manager Owen asked Planning Director Robert Harkrader to explain the density difference between the current rezoning and the proposed rezoning.

Mayor Ross asked if anyone had comments on the B-2 portion on Church Street.

Mr. Richard Stout, 2612 North Church Street, stated that he owned one of the lots on Church Street and would like to have it rezoned as commercial. He stated that there were businesses across the street, on the right and left sides and would like to see it rezoned.

Upon motion by Councilmember Huffman, seconded by Councilmember Starling, it was resolved unanimously to close the public hearing.

Upon motion by Councilmember Huffman, seconded by Councilmember Starling, it was resolved unanimously to deny the request to rezone Lot 4C to MF-A, Multifamily District.

Councilmember Huffman made a motion to approve the request to rezone Lots 13-17-4D and 13-10-21 to B-2, General Business District. Councilmember Jones seconded the motion.

Councilmember Huffman withdrew the foregoing motion and made the following two substitutive motions:

Lot 13-17-4D

Upon motion by Councilmember Huffman, seconded by Councilmember Jones, it was resolved approve the request to rezone Lot 13-17-4D to B-2, General Business District.

The motion passed by a vote of three to two with Councilmembers Starling and Wall voting against the motion.

07-15

ORDINANCE TO AMEND OFFICIAL ZONING MAP (Rezone Property on North Church Street - ACTM 13-17-4D)

BE IT ORDAINED by the City Council of the City of Burlington, North Carolina:

Section 1. That the official zoning map, an element of the Burlington Zoning Ordinance, and the Comprehensive Land Use Plan are hereby amended by rezoning from R-9, Residential District, to B-2, General Business District, the property located on the north side of North Church Street approximately 360 feet southeast of McKinney Street and being as shown on Alamance County Tax Map 13-17, Lot 4D.

Section 2. That all ordinances or parts of ordinances inconsistent or in conflict with this ordinance are hereby repealed.

Section 3. That this ordinance shall take effect upon passage.

Lot 13-10-21

Upon motion by Councilmember Huffman, seconded by Councilmember Jones, it was resolved to approve the request to rezone Lot 13-10-21 to B-2, General Business District.

The motion passed by a vote of three to two with Councilmembers Starling and Wall voting against the motion.

07-16

ORDINANCE TO AMEND OFFICIAL ZONING MAP (Rezone Property on North Church Street - ACTM 13-10-21)

BE IT ORDAINED by the City Council of the City of Burlington, North Carolina:

Section 1. That the official zoning map, an element of the Burlington Zoning Ordinance, and the Comprehensive Land Use Plan are hereby amended by rezoning from R-9, Residential District, to B-2, General Business District, the property located on the north side of North Church Street approximately 360 feet southeast of McKinney Street and being as shown on Alamance County Tax Map 13-10, Lot 21.

Section 2. That all ordinances or parts of ordinances inconsistent or in conflict with this ordinance are hereby repealed.

Section 3. That this ordinance shall take effect upon passage.

Note: A five-minute break was taken due to technical difficulties.

PUBLIC HEARINGS:

ITEM 3: REZONE PROPERTY - RURAL RETREAT ROAD AND UNIVERSITY DRIVE (ON APPEAL)

Mayor Ross announced that a public hearing had been scheduled to consider rezoning from R-15, Residential District, to CB, Conditional Business District, for a Unified Business Development allowing all uses permitted in a B-2, General Business District, excluding the following: auto repair and service, adult establishments, laundries, industrial laundries and plumbing, sheet metal and roofing shops. The property is located on the southeast corner of Rural Retreat Road and University Drive as shown on Alamance County Tax Map 3-26-89. (ON APPEAL)

Mr. Charles Bateman, Bateman, Oertel & Koonts, PLLC, stated that the proposed property was located at the corner of Rural Retreat and University and consisted of 6.3 acres. He stated that C. T. Sharpe Company had proposed to construct a mirror image of University Station. Mr. Bateman stated that it was suggested at the Planning and Zoning Commission meeting that the goal for this property would be multifamily or high density residential. He asked the Council to take a serious look at the types of land use that are available and the locations that are available. He stated that a commercial site should be located at an intersection and adjacent to a main thoroughfare. Mr. Bateman urged the City Council to consider the ramifications.

Mr. Bateman stated that all NCDOT requirements had been met for this site.

Mr. Huffine stated that the site plan proposed the continuation of the bike path parallel to University Drive and shows above and beyond recommended deceleration lane and taper for the right-in, right-out access on University Plaza. He stated the site access points both for University Drive and Rural Retreat are placed as far back from the intersection as feasible. Mr. Huffine stated vast improvements to Rural Retreat had been proposed with this project.

Mr. Ramey Kemp, Ramey Kemp & Associates, 5808 Farrington Place, Raleigh, North Carolina, stated the traffic study included an analysis of University Drive, Rural Retreat Road and Park Drive. He stated the only improvements required would be right turn lanes into the site. Mr. Kemp stated that he determined that two outbound lanes were needed on Rural Retreat, one left turn and one right turn lane. Mr. Kemp stated that NCDOT came back and asked to improve upon that with the addition of a third through lane across the front of the property on Rural Retreat.

Mr. Chad Sharpe, Burlington resident, stated that this was his hometown and that he would put only quality projects in the area. He stated that if there were any problems with traffic areas he would have stopped the projects. Mr. Sharpe stated that he had developed several foreclosed and condemned properties that had improved the tax base in the community.

Mr. Bob Ware, 4024 Williams Mill Road, stated that the Land Use Plan had been adopted late last year around August and this project had been ongoing for approximately two and a half years. Mr. Ware stated that a lot of these issues could have been handled as part of the Land Use Plan. He stated that he was not aware of any animosity or vendetta between the Council and Planning and Zoning Commission, as he had read about in the paper. (NOTE: Mr. Ware read an excerpt from minutes of April 4, 2006, City Council meeting concerning the Land Use Plan.) Mr. Ware stated that the Land Use Plan should not be changed when the ink had barely dried.

Mr. Richard Franks, 3361-B Garden Road, member of Planning and Zoning Commission, stated that the recent Times-News article was eye opening and that he did not realize there was animosity between the Council and the Planning and Zoning Commission. Mr. Franks reiterated Mr. Ware's concerns. Mr. Franks stated that the question was land use. He asked the Council to not rezone the parcels one at a time.

Mr. Don Bullis, 4024 Rural Retreat Road, stated that he was not opposed to the rezoning.

Mr. Clyde Corbett, Williams Mill Road, owner of 28 acres, spoke in opposition of the rezoning due to traffic congestion.

Mr. Celo Faucette stated that the City needed to stick to the Land Use Plan and that University Drive would become commercial like Church Street and Huffman Mill Road. He stated that when a local developer that had done good for the community without asking for incentives to build projects like this all across Burlington, the City should not give special treatment and to keep it in mind that the developer had come to the Council asking for this rezoning without asking for incentives.

Councilmembers Huffman and Jones stated that the City does not give incentives for retail.

Mr. Faucette stated that City Manager Harold Owen said that the City does not like to depend on large businesses because small businesses in Alamance County were the backbone of our economy. Mr. Faucette stated that this was a medium size businessman that wanted to do good for our community. He stated that University Drive would change and one could have a Land Use Plan and that it would still change. Mr. Faucette stated that the block from Rural Retreat to St. Mark's would change sooner or later. Mr. Faucette stated that he thought this project was a good fit.

Mr. Earl Jagers, 4012 Williams Mill Road, spoke in favor of the rezoning.

Mr. Chad Sharpe stated that on a six-acre tract of land there was no way to develop residential. He stated that the best use was commercial.

Mr. Richard Jacoby, 4059 Williams Mill Road, stated that he had attended several meetings and kept hearing the same issues with land use and with traffic. Mr. Jacoby spoke in favor of the rezoning.

Mr. Don Cox, 614 Morningside Court, stated that he had tried to buy some of this property and that it was a beautiful location for an automobile dealership. He stated that commercial was located on the west, east, south and a park on the north. He stated that at some point the whole block would be commercial. Mr. Cox stated that the highest and best use of the property would be business. He recommended that the entire block be rezoned commercial.

Mr. Mike Taylor, 3849 Rural Retreat Road, spoke in favor of the rezoning because commercial development would increase adjacent residential property values. Mr. Taylor stated that commercial development would decrease traffic on Rural Retreat Road and would be safer.

Upon motion by Councilmember Starling, seconded by Councilmember Huffman, it was resolved unanimously to close the public hearing.

Councilmember Wall asked Mr. Bateman if anything would be done to protect the integrity of the park.

Mr. Bateman stated they had added a traffic lane on Rural Retreat to ease the traffic and added a bike lane.

Councilmember Jones stated that there was no architectural standard for this development.

Mr. Bateman stated that his client would be happy to add it as a further condition.

Mr. Sharpe stated that the structures would be stone and brick with copper awnings.

Councilmember Wall stated that people are exhausted with strip shopping centers in Burlington and appreciated the job that Mr. Sharpe and his partner had done in several locations.

Councilmember Starling stated that he respected what Mr. Sharpe and Mr. David Morton had done in the community. He expressed concern with the access on Rural Retreat Road and the protection of the park. Councilmember Starling stated if the Council passed this rezoning request, it would open the door for future development down to St. Mark's Church Road.

Councilmember Jones voiced concerns for Rural Retreat Road and the park. He said that three lanes would not be sufficient on Rural Retreat Road in the future. Councilmember Jones stated that there had not been any local person willing to invest the \$140 million that had been invested in the new Alamance Crossing.

Mayor Ross stated that the frontage from the corner of Rural Retreat and back to the interstate would someday become commercial and believed it was the highest and best use of the property.

Upon motion by Councilmember Huffman, seconded by Councilmember Starling, it was resolved to deny the request to rezone the property to CB, Conditional Business District. The motion to deny passed by a vote of three to two with Mayor Ross and Councilmember Wall voting against the request to deny the rezoning.

Councilmember Huffman stated that this was one of many requests for rezoning that would be received over the next ten years and commended the two Planning and Zoning Commission members for being present. He stated that the animosity written about in the paper was not there and that the Land Use Plan was a working document in progress.

NEW BUSINESS:

ITEM 4: NEW TAXI CAB FRANCHISE - MS. VIRGINIA MUNIZ

Mayor Ross announced that the City Council would consider a request for a new taxicab franchise.

Capt. Greg Seel, Burlington Police Department, stated that the Police Department had received an application for a taxicab franchise and as required by City Code 35-34 all requirements had been met. Captain Seel recommended that Ms. Virginia Muniz be permitted to operate a taxicab franchise.

Councilmember Jones asked Ms. Muniz what was her role in the business.

Captain Seel stated that she was the owner and that she may drive.

Councilmember Jones asked Captain Seel if the insurance had been verified.

Captain Seel stated that the owners had provided documentation of insurance on the cars and provided copies of registrations.

Upon motion by Councilmember Huffman, seconded by Councilmember Starling, it was resolved unanimously to approve a new taxicab franchise.

ITEM 5: SUBMIT 2006-07 - ONE-YEAR ACTION PLAN - COMMUNITY DEVELOPMENT PLAN

The City Council considered approval to submit the 2007-08 One-Year Action Plan of the Community Development Program.

Ms. Susan Taylor, Assistant Planning Director, stated that the 30-day comment period was complete, that required public hearings had been held and that she had not received any comments other than the one received during the public hearing. Ms. Taylor asked the Council for approval to submit the 2007-08 One-Year Action Plan to HUD.

Upon motion by Councilmember Jones, seconded by Councilmember Wall, it was resolved unanimously to approve the 2007-08 One-Year Action Plan of the Community Development Program.

ITEM 6: REPORT - CITY COUNCIL APPOINTED EMPLOYEES

The City Council gave a report on City Council appointed employees.

Upon motion by Councilmember Jones, seconded by Councilmember Starling, it was resolved unanimously to give the City Manager a five percent increase in salary this fiscal year.

City Manager Harold Owen expressed appreciation able to continue being a part of the organization. He stated that he had served the City for 31 years and stated that he had no immediate plans but to continue to work. Mr. Owen asked the Council to consider an employment agreement, which has become common in local government.

Councilmember Jones stated that the City Council had responsibilities for two employees of the City, the City Manager and the City Attorney with respect to hiring, firing, supervising and providing raises. Councilmember Jones stated that the Council started the process and had two closed session minutes on January 8, 2007, and on March 6, 2007, and that part of those discussions dealt with strengths and weaknesses of those two members as well as succession plans. He stated that the last raise that this Council voted upon was over 18 months ago or July 1, 2005, and that the Council had been remiss in its responsibilities in addressing appropriate compensations for both gentlemen.

Mayor Ross stated that the Council had been extremely pleased with City Manager Owen and City Attorney Ward and that they had many more strengths than weaknesses. Mayor Ross stated that over the past three to four years the City had grown dramatically which had created an enormous amount of work for the Manager and Attorney and both had stepped up to the plate. He stated that the City of Burlington was fortunate to have them and that in many cases had saved the taxpayers money. Mayor Ross stated that he had been pleased with their performances and the Council was long overdue in evaluating and adjusting their salaries.

Councilmember Starling stated that the only City Manager and City Attorney he had worked with were Mr. Owen and Mr. Ward and that both worked very hard and did a great job.

Councilmember Wall stated that he echoed the previous comments and stated that Mr. Owen and Mr. Ward had been very professional and that he appreciated the guidance and was very impressed with the entire City staff, work ethics and professionalism.

Councilmember Huffman stated "ditto." He stated that Mr. Owen had good department heads, had made a good transition, and expressed good leadership. He expressed concerns that Mr. Owen was living the job and suggested Mr. Owen take vacation or time off.

Councilmember Jones commented that within the next year or two Mr. Owen would be pushed and expected to provide a succession plan even if it meant a position under Mr. Owen in order to give him relief that was needed.

Upon motion by Councilmember Jones, seconded by Councilmember Starling, it was resolved unanimously to give the City Manager a five percent increase in salary this fiscal year.

City Attorney Ward stated that it would be appropriate to think in terms of succession planning. Mr. Ward stated that some years ago the City had an Assistant City Attorney in the middle 1970's and two assistants. He stated that when the second Assistant City Attorney resigned, the decision at that point was to go to outside services. He stated that it would now be appropriate to bring someone on board and that he would request in this budget, for that position to be reinstated. Mr. Ward said that he too would like to be available on a contractual basis. He stated that he could be of help to the

initiation of the succession plan. Mr. Ward stated that it had been a wonderful opportunity to work for the City and he always looked forward to coming to work.

City Manager Owen stated that the City was fortunate to have a well-educated, professional, non-partisan, no ward system, and that he had excellent department heads such as Mr. Ward.

Mayor Ross stated that he had served for almost ten years and looking at the caseloads of rezoning and issues with contracts compared to ten years ago, he agreed that the assistant position needed to be brought back.

Councilmember Wall asked Mr. Ward if he had a time line in reference to someone being hired.

City Attorney Ward stated there was no time line but asked to initiate the process and that he would look to the Council for advice.

Councilmember Huffman stated that people do not understand what the City had in Bob Ward but that the Council knows what kind of work he did. He stated that Mr. Ward was known in all circles as an expert in municipal law. He stated that Mr. Ward had taught in the various MPA programs around the state.

Mayor Ross stated that when attending meetings in Raleigh and Washington that Mr. Ward was well known and that he would hear comments about Mr. Ward and his expertise.

Upon motion by Councilmember Jones, seconded by Councilmember Starling, it was resolved unanimously to give the City Attorney a three percent increase in salary this fiscal year.

CITY MANAGER COMMENTS:

Mr. Owen reminded the Council of Town Hall Day on Wednesday, May 9, 2007, and that he was in the process of scheduling appointments with Senator Foriest and Representatives Bordsen and Allred.

PUBLIC COMMENT PERIOD:

There was no public comment.

ADJOURN:

Upon motion by Councilmember Huffman, seconded by Councilmember Jones, it was resolved unanimously to adjourn.

Jondeen D. Terry
City Clerk